COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 28, 2000

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION CASE NO. PUE980813

Ex Parte: In the matter of considering an electricity retail access pilot program-Virginia Electric and Power Company

FINAL ORDER

On March 20, 1998, the State Corporation Commission ("Commission") entered an Order establishing an investigation requiring various parties to perform activities and provide information to assist the Commission in moving forward in the evolving world of electric utility restructuring.[1] Among other things, this Order required Virginia Electric and Power Company ("Virginia Power") and American Electric Power-Virginia ("AEP-VA") each to begin work toward implementing at least one retail access pilot program ("Pilot Program"). On November 2, 1998, Virginia Power and AEP-VA filed Pilot Programs in Case No. PUE980138.

[1] This Order and other related documents may be found in Commonwealth of Virginia ex. rel. State Corporation Commission, Ex Parte: In the matter of requiring reports and actions related to independent system operators, regional power exchanges and retail access pilot programs, Case No. PUE980138.

On December 3, 1998, the Commission established three separate dockets, one each for the consideration of Virginia Power and AEP-VA's Pilot Programs[2], and a docket to consider the adoption of interim rules to govern issues common to both natural gas and electricity retail access pilot programs including certification, codes of conduct, and standards of conduct governing relationships among entities participating in such programs.[3] The December 3, 1998, Order Establishing Procedural Schedule in this matter, Case No. PUE980813, assigned the case to a Hearing Examiner, set a hearing for June 29, 1999, and established a schedule for the filing of testimony, protests, and other documents in this case. The Order also required Virginia Power to publish throughout its service territory notice of the impending hearing and information on participation.

On April 28, 1999, Virginia Power was granted leave to supplement its prefiled testimony and exhibits, and other parties were granted an opportunity to file requests for changes

[2] The docket for consideration of AEP-VA's Pilot Program is Commonwealth of Virginia At the relation of the State Corporation Commission, Ex Parte: In the matter of considering an electricity retail access pilot program – American Electric Power – Virginia, Case No. PUE980814.

[3] The docket for consideration of rules applicable to both natural gas and electricity retail access pilot programs is Commonwealth of Virginia At the relation of the State Corporation Commission, Ex Parte: In the matter of establishing interim rules for retail access pilot programs, Case No. PUE980812.

in the procedural schedule. By Hearing Examiner's Ruling dated May 6, 1999, the evidentiary hearing in this case was rescheduled to September 8, 1999, and other procedural dates were moved to allow the parties time to analyze and respond to the Company's supplemental testimony and exhibits, which proposed several major changes to the previously filed Pilot Program.[4]

The hearing was conducted September 8-9, 1999, before Hearing Examiner Alexander F. Skirpan, Jr., Richard D. Gary, Esquire, Kodwo Ghartey-Tagoe, Esquire, and Karen L. Bell, Esquire, represented Virginia Power at the hearing. Donald R. Hayes, Esquire, appeared on behalf of Washington Gas Light Company ("WGL"). Anthony Gambardella, Esquire, appeared on behalf of AEP-VA. Marleen L. Brooks, Esquire, appeared on behalf of The Potomac Edison Company, d/b/a Allegheny Power. Edward L. Petrini, Esquire, appeared on behalf of the Virginia Committee for Fair Utility Rates ("Virginia Committee").[5]

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[4] By Hearing Examiner's Ruling dated August 5, 1999, the Company was granted leave to file further supplemental direct testimony concerning the then recently completed Consumer Education Plan. Protestants were given additional time to file supplemental testimony addressing the issues raised in the August 5, 1999, testimony.

[5] Members of the Virginia Committee are: AlliedSignal Inc.; Amoco Oil Company; Anheuser-Busch, Incorporated; Canon Virginia, Inc.; E. I. du Pont de Nemours & Company, Inc.; Ford Motor Company; General Motors Corporation; Nabisco Brands, Inc.; National Welders Supply (Chesterfield); Newport News Shipbuilding and Dry Dock Co.; Praxair, Inc.; R. R. Donnelley, Inc.; Reynolds Metals Company; Siemens Automotive, L.P.; Stone Container Corporation; Union Camp Corporation; United States Gypsum Company; Wayn-Tex, Inc.; and Westvaco Corporation.

Counsel for Energy Consultants, Inc., Brayden Automation Corporation, and Picus, LLC, was Kenworth E. Lion, Jr., Esquire. On the second day of the hearing, Timothy B. Hyland, Esquire, appeared on behalf of the Apartment and Office Building Association of Metropolitan Washington ("AOBA"). Michel A. King appeared *pro se*. John F. Dudley, Esquire, appeared on behalf of the Division of Consumer Counsel, Office of the Attorney General ("Attorney General"). M. Renae Carter, Esquire, C. Meade Browder, Jr., Esquire, and William H. Chambliss, Esquire, appeared on behalf of the Staff of the State Corporation Commission ("Staff").

Enron Energy Services, Horizon Energy Company d/b/a Exelon Energy and Exelon Management & Consulting, the National Energy Marketers Association, and Philip Morris USA filed notices of protest but did not file protests and did not participate in the hearing. The Virginia Cooperatives[6] and the Southern Environmental Law Center filed both notices of protest and protests but did not participate in the hearing.

[6] The Virginia Cooperatives is a group consisting of A&N Electric Cooperative; BARC Electric Cooperative; Community Electric Cooperative; Craig-Botetourt Electric Cooperative; Mecklenburg Electric Cooperative; Northern Neck Electric Cooperative, Inc.; Northern Virginia Electric Cooperative; Powell Valley Electric Cooperative; Prince George Electric Cooperative; Rappahannock Electric Cooperative; Shenandoah Valley Electric Cooperative; Southside Electric Cooperative, Inc.; Old Dominion Electric Cooperative; and Virginia, Maryland & Delaware Association of Electric Cooperatives.

A number of participants offered prefiled and *ore tenus* testimony. Virginia Power prefiled a description of its Pilot Program. As proposed, the Pilot Program would offer retail choice to about 24,000 customers under two plans. Plan A would allow about 19,000 individual and 5,000 aggregated residential and small commercial customers throughout the City of Richmond, the Town of Ashland, and the Counties of Chesterfield, Henrico, and Hanover ("the Greater Richmond Area") to shop competitively for their electricity generator. Plan B would apply to intermediate and large commercial and industrial users throughout Virginia Power's service territory. Plan B would be fully subscribed when 170 million kWh of energy per year are being supplied by competitors.

In support of the Pilot Program proposal, Virginia Power prefiled the testimony of David Koogler and Andrew Evans. Mr. Koogler testified concerning most aspects of the Pilot Program proposal, particularly its objectives, limitations, design, education and awareness measures, supplier participation guidelines, customer selection, metering, and program reporting and evaluation. He also testified concerning the recovery of stranded costs during the Pilot Program, presented a method for calculating market prices and resulting wires charges, and clarified the Company's positions relating to customer switching and to the billing, collection and payment service charge. Mr.

Evans testified concerning the portions of the Pilot Program relating to utility tariffs, terms and conditions, and retail transmission access, scheduling and settlement. He also testified concerning the Company's proposed charges for suppliers and customers and discussed the design of Virginia Power's proposed unbundled rates and wires charges.

WGL prefiled the testimony of Paul H. Raab, an independent economic consultant, who provided an alternative set of unbundled rates and wires charges to the proposal by Virginia Power. He urged that the Pilot Program be expanded to include a larger geographic area and greater number of customers. Mr. Raab further recommended the unbundling and competitive provision of certain revenue cycle services, e.g., billing.

Energy Consultants, Inc., Brayden Automation Corporation, and Picus, LLC, filed the testimony of William D. Kee, Jr., president of Energy Consultants, Inc. He urged the Commission to require competing utilities to fund energy efficiency programs and to allow third parties to resell the electricity of incumbent electric utilities.

AOBA prefiled the testimony of Bruce R. Oliver, the president of Revilo Hills Associates, Inc. Mr. Oliver recommended that the Commission increase the size of the Pilot Program to allow five to ten percent (5-10%) of customers currently served under Virginia Power rate schedules GS-3 and

GS-4 to participate. He also urged the Commission to deny the Company's request for recovery of stranded costs and its proposal to calculate market prices based upon historic PJM Interconnection, L.L.C. ("PJM") data.

The Virginia Committee prefiled the testimony of Jeffrey Pollock, a principal of Brubaker & Associates, Inc. Mr. Pollock advocated changing the structure of the Pilot Program to allow five percent (5%) of the Company's jurisdictional load to participate and to drop the proposed requirement that participants must terminate service under nontraditional rate schedules. He also asserted that the Company's wires charges are overstated because they fail to account for long-term market prices for markets accessible to Virginia Power. He urged the Commission to allow pilot participants to self-supply metering, billing, and ancillary services. He also agreed with the Company that unbundled rates for the Pilot Program should be designed to preserve revenue neutrality and that differences between unbundled Virginia retail transmission rates and Virginia Power's Federal Energy Regulatory Commission Open Access Transmission Tariff ("FERC OATT") should be reflected in the form of an adjustment to other unbundled charges.

The Attorney General prefiled the testimony of Don Scott Norwood, a Principal of GDS Associates, Inc. He advocated the establishment of a single "price to beat" within each customer

class. He further opposed the recovery of any difference between the unbundled Virginia retail transmission rates and the FERC OATT. He proposed adjusting Virginia Power's market prices to reflect retail market prices and future wholesale price indices. He also advocated expanding the Pilot Program to five percent (5%) of the annual sales for each customer class, plus an additional two percent (2%) of sales to residential and small commercial classes for purposes of aggregation. He agreed with the Company that competitive metering and billing should not be allowed during the Pilot Program. He also contended that Virginia Power should be required to install interval meters for a sample number of customers during the Pilot Program to develop hourly load profile information by rate class.

The Staff prefiled the testimony of David R. Eichenlaub, Rosemary M. Henderson, and Howard M. Spinner. Mr. Eichenlaub testified concerning the status of the proposed interim rules for retail access pilot programs, consumer education, electronic data interchange, and reporting and monitoring of the Pilot Program. He recommended that the Commission adopt the consumer education plan developed by the Consumer Education Workgroup. He also urged the Commission to require the Company to provide semi-annual reports concerning competitive markets and other topics as requested by Staff.

Ms. Henderson addressed retail rate unbundling and the Company's proposed terms and conditions of service for the Pilot Program. Particularly, Ms. Henderson discussed each of the new fees proposed by the Company, questioning whether they are permitted under the Company's current rate cap.

Mr. Spinner testified about a number of issues, including pilot objectives and pilot size, availability, and eligibility. He urged the Commission to require a pilot size of at least five percent (5%) of available customers and load. He also recommended that the Company's market price projections include information about several trading hubs, not just the PJM interconnection. He proposed a structure for wires charges that would provide residential customers with a single shopping credit per season. He agreed with the Company's proposals concerning load profiling, balancing and settlement, and metering and billing.

After these parties prefiled testimony, Virginia Power filed the rebuttal testimony of witnesses David Koogler and Andrew Evans. Mr. Koogler responded to the testimony of several parties concerning Pilot Program size and scope, calculation of market price, customer aggregation, competitive metering and billing, terms and conditions, interim rules, electronic data transfer, and reporting requirements. Mr. Evans' testimony concerned the structure of wires charges, FERC transmission

rates and the OATT, load profiles, non-traditional rate schedules, customer self-supply of ancillary services, terms and conditions, energy service provider and customer charges, and the effect the Pilot Program would have on the fuel factor.

During the hearing a Stipulation was offered by Virginia Power, the Commission Staff, WGL, and Michel King. This Stipulation proposed a resolution of two key issues in the Pilot Program: (i) pilot size and scope, and (ii) a methodology for calculating the projected market price for generation. Under the Stipulation, the Pilot Program for both Plans A and B would be conducted in two phases, with Phase I starting five months after a final order in this case and Phase II starting January 1, 2001. The Pilot Program parameters would be increased to encompass 183.3 MW of coincident load in Phase I. During Phase II, the Pilot Program would be increased to include 366.5 MW of coincident load, allowing 71,175 customers, or 3.4 percent (3.4%) of the Company's Virginia jurisdictional customers, to choose a competitive energy service provider. For Phase II, Plan A customers in a selected geographic area in Northern Virginia would be able to participate as well as those in the Greater Richmond Area.

The Stipulation proposed that market prices would be based on actual historic, wholesale sales of power in the PJM market, adjusted for prices achieved at the PJM West or Cinergy hubs,

net of transmission and ancillary service costs and transmission losses. Under the Stipulation, the Company and the Commission Staff would jointly determine market prices ninety (90) days before implementation of each phase of the Pilot Program. The Stipulation included a reservation of rights whereby either the Company or Staff could recommend an alternative methodology for determining market prices for Phase II of the Pilot Program. The Stipulation requested the Commission to notify the signatories and allow them ten (10) days to modify the Stipulation if the Commission decided not to adopt the Stipulation as originally presented. If no modified Stipulation could be achieved, the signatories requested that they be allowed to withdraw their support for it and request a hearing concerning any issues raised in this proceeding.

On November 30, 1999, the Hearing Examiner issued his Report. He found that, because so many parties did not agree to the Stipulation, the issues covered therein were actively litigated by all the parties, including those who had signed the Stipulation. Therefore, though the Hearing Examiner did not adopt the Stipulation in its entirety, he held there was no need for further hearings. His findings and recommendations were as follows:

> (1) Virginia Power's Pilot Program, as modified [in the Report], should be adopted;

(2) The size of the Pilot Program should be adjusted to the level contained in the Stipulation;

(3) The "projected market prices for generation" should be determined following the methodology set forth in the Stipulation and modified to eliminate any adjustments related to Virginia Power's transmission losses, transmission charges, or other ancillary service costs;

(4) As provided in the Stipulation, the "projected market prices for generation" should be determined ninety [90] days prior to the beginning of each phase of the Pilot Program following the methodology adopted by the Commission in this proceeding;

(5) Unbundled transmission rates for the Pilot Program should reflect the FERC OATT. Differences between the FERC OATT and Virginia Power's jurisdictional unbundled transmission cost of service should not be treated as transition costs;

(6) Wires charges should be blocked to mirror the present rate structure;

(7) Competitive metering and billing services should be permitted for only large commercial and industrial customers during the Pilot Program;

(8) The terms and conditions of the Pilot Program should be modified to comply with the rules adopted by the Commission in Case No. PUE980812;

(9) Fees and charges for new services offered under the Pilot Program are not subject to the rate cap provisions of Va. Code § 56-582 A 3;

(10) Customers should not be charged at installation for the removal of advanced meters. Such charges may be collected from customers only upon removal;

(11) Customers should be permitted to self-supply ancillary services as provided under Virginia Power's FERC OATT;

(12) Customers taking service under non-traditional rate schedules should be permitted to participate in the Pilot Program and may return to the non-traditional rate schedule;

(13) Customers that have a portion of their load supplied under a non-traditional rate schedule may move their load proportionally to a competitive supplier during the Pilot Program;

(14) Requested changes in the fuel factor should be deferred and addressed during Virginia Power's next fuel factor filing;

(15) A telecommunications-like resale requirement should not be added to the Pilot Program;

(16) Virginia Power and competitive suppliers should not be required to fund energy efficiency programs during the Pilot Program; and

(17) Virginia Power should track and report on items it has proposed and as requested by Staff to the extent it is able to obtain such data in the normal course of business.

The Hearing Examiner recommended that the Commission enter an order adopting his findings, approving the Company's Pilot Program as modified in the Hearing Examiner's Report, and dismissing the case from the Commission's docket of active cases.

On December 21, 1999, WGL, AEP-VA, the Virginia Committee, the Attorney General, the Staff, and Virginia Power filed comments and exceptions to the Hearing Examiner's Report.

WGL supported the Hearing Examiner's recommendation to allow competitive metering and billing but urged that

competitive billing be extended to residential customers as well, particularly during Phase II of the Pilot Program. WGL advocated that the Commission at least allow competitive service providers to bill directly for their own electricity sales, if not for the entire electric bill. WGL noted that Phase II will include a portion of Northern Virginia, where pilot programs for the competitive sale and purchase of natural gas are currently underway. Since suppliers in the natural gas pilot programs are allowed to self-bill for services, WGL advocated similar treatment for competitive electric suppliers.

AEP-VA agreed with the Hearing Examiner's recommendation to use historical data to project market prices. However, AEP-VA noted that the historical indices used in the Virginia Power Pilot Program should be different from those used for the AEP-VA Pilot Program to reflect properly the markets in which each company participates. AEP-VA also advocated that the Commission follow the Stipulation's method of reducing market prices by an amount equal to the transmission costs and transmission line losses when calculating market price. AEP-VA reiterated its conviction that competitive metering and billing is lawful and should be allowed in its own Pilot Program but took no position on whether it should be allowed in the Virginia Power Pilot Program. AEP-VA agreed with Virginia Power that fees for customers who switch suppliers during a pilot program are fees

for new services and therefore not prohibited under the rate cap provisions of § 56-582 A 3. Finally, AEP-VA urged that Virginia Power be allowed to recover the difference between its FERC OATT revenues and the transmission costs embedded in its Virginia jurisdictional retail rates.

The Virginia Committee advocated use of five percent (5%) of the Company's jurisdictional load for the Pilot Program, arguing that this increase is necessary to effectuate competition. Regarding market price, the Virginia Committee urged the Commission to use projected retail, rather than historic wholesale, prices, contending that this treatment would best comply with § 56-583 A of the Code of Virginia. The Virginia Committee further urged that the Commission take a long-term view when considering market prices and advocated the "all-in cost of generation" method, which accounts for capital, operation and maintenance, overhead, and fuel expenses. The Virginia Committee agreed with the Hearing Examiner that customers should be allowed to self-supply ancillary services during the Pilot Program but disagreed with the Hearing Examiner's adoption of Virginia Power's "compromise" position regarding participation in the Pilot Program by customers on non-traditional rates.[7] The Virginia Committee urged that no

[7] A detailed explanation of Virginia Power's "compromise" position can be found in the section of this Final Order labeled "Participation by Customers under Non-Traditional Rates."

part of a customer's non-traditional load should be considered in the Pilot Program since this would violate the rate cap provisions of § 56-582 A 3 of the Code of Virginia. The Virginia Committee also urged that competitive metering and billing should be available for all classes of customers, not just the GS-3 and GS-4 classes. Finally, the Virginia Committee asserted that, regardless of what the Commission decides, there is no need for further hearings or proceedings in this case because all parties have had the opportunity to litigate their positions.

The Attorney General offered comments concerning pilot size, calculation of projected market prices for generation, the setting of wires charges, and whether differences between the Company's FERC OATT and its unbundled Virginia jurisdictional transmission rates can be recovered as a transition cost. The Attorney General continued to advocate a Pilot Program size of five percent (5%) of annual sales for each class, with an additional two percent (2%) set aside for aggregation under Plan A, citing the Hearing Examiner's statement that, in general, the larger the Pilot Program, the more attractive it will be to competitive suppliers. The Attorney General also recommended the use of a futures adjustment to historical projections of market price, plus or minus ten percent (10%), to capture expected increases and decreases in market price. The Attorney

General also advocated that the projected market price reflect the retail costs of providing the retail electricity product, because customers will only shop competitively if an energy service provider can beat the projected market price for generation. The Attorney General urged the Commission to use a single market price or "price to beat" to avoid customer confusion. The Attorney General further argued that the wires charge should only be calculated once for the entire Pilot Program to minimize supplier risk and to better comply with the provisions of § 56-583 A of the Code of Virginia. Finally, the Attorney General supported the Hearing Examiner's recommendation regarding the treatment of differences between the FERC OATT and the Virginia jurisdictional transmission tariffs.

The Commission Staff also offered comments to the Hearing Examiner's Report. These comments supported the full use of the Stipulation with regard to pilot size and market price. The Staff also urged the Commission to adopt wires charges that provide one shopping credit per season to facilitate customer understanding and to minimize seasonal gaming. The Staff further asserted that both of its proposed options fully comply with the wires charge provisions of § 56-583 A of the Code of Virginia. The Staff argued that the Commission may allow competitive metering and billing pursuant to its authority under § 56-234 of the Code of Virginia but suggested that the

Commission may obtain adequate information about this facet of competition by allowing competitive metering and billing in the AEP-VA Pilot Program. The Staff continued to seek clarification regarding whether the fees proposed by the Company would violate the rate cap provisions of § 56-582 A 3 of the Code of Virginia. Finally, the Staff urged the Commission to require the Company to make semi-annual reports to discuss the progress of the Pilot Program.

Virginia Power also filed comments and exceptions to the Hearing Examiner's Report. The Company emphasized that the Commission should adopt the Stipulation in its entirety or allow the signatories thereto time to reconsider their positions and, if necessary, reopen the record in this matter. The Company specifically advocated that the Commission reject the Hearing Examiner's treatment of transmission and ancillary service costs when determining market price, on the basis that the Hearing Examiner's recommendation violates the statutory provisions of §§ 56-583 and –584. Virginia Power also argued that differences between the FERC OATT and Virginia jurisdictional transmission rates should be treated as transition costs, recoverable through wires charges. The Company further proposed to allow the self-supply or third-party supply of Ancillary Services 3, 4, 5, and

6[8] pursuant to the Company's OATT and to bill the transmission customer, not necessarily the retail customer, directly for basic transmission service and Ancillary Services purchased from the Company.[9] Finally, the Company urged that, on the basis of legal and operational considerations, the Commission not allow any competitive metering or billing during the pilot program.

NOW THE COMMISSION, having considered the record, the Hearing Examiner's Report, the comments and exceptions to the Hearing Examiner's Report, and the applicable law, is of the opinion and finds that we should adopt in part the findings and recommendations set forth in the Hearing Examiner's Report, as discussed below.

The General Assembly has established an ambitious schedule for the implementation of customer choice and the development of competition for the generation component of retail electric

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[8] These are: Schedule 3 - Regulation and Frequency Response Service; Schedule 4 – Energy Imbalance Service; Schedule 5 – Operating Reserve – Spinning Reserve Service; and Schedule 6 – Operating Reserve – Supplemental Reserve Service.

[9] Attachment L, Rates, Terms and Conditions for Transmission Service and Ancillary Services Under Virginia Power's Retail Access Pilot Program, filed on December 21, 1999, with the Company's Comments and Exceptions to the Hearing Examiner's Report, defines "Retail Transmission Customer" to be:

> An Eligible Retail Customer who has executed a Retail Network Transmission Service Agreement or a Retail Firm Point-to-Point Service Agreement in the form set out in Appendix 1 or Appendix 3 to this Attachment, respectively, or who has requested Transmission Service under the Retail Pilot pursuant to an unexecuted service agreement.

service. In light of this schedule, the Pilot Program serves a number of purposes. First, the Pilot Program should stimulate retail access, customer choice and competition. Second, the Pilot Program should be part of the transition to full customer choice and competition. Third, the Pilot should help identify actual and potential operating problems between and among incumbent utilities, competitive service providers, aggregators, and end-users, as well as possible solutions. Fourth, the Pilot should help identify areas and operations that may limit or inhibit the development of competition and possible solutions and ways to enhance competition. These purposes have been important considerations in our establishment of the Virginia Power Pilot Program.

We will not adopt the Stipulation signed by the Company, the Commission Staff, WGL, and Michel King; however, our findings and conclusions include certain items from the Stipulation. For the reasons set out below, we will deny the request of the signatories to the Stipulation that, if we do not adopt the Stipulation, they be notified and granted ten (10) days to attempt to reach a modified stipulation or to withdraw support for the Stipulation and request a hearing on any of the issues covered by the Stipulation.

An Eligible Retail Customer could be either an energy service provider or a retail consumer. See §§ 1.1 and 1.5 of Attachment L.

In this case, ten (10) parties representing individuals, businesses, and other entities filed protests. The majority of these Protestants, along with the Company and the Staff, participated in the hearing. Only two (2) of these Protestants, along with the Company and the Commission Staff, signed the Stipulation. A number of parties to the proceeding did not sign the Stipulation, and all parties had an opportunity to litigate all of the issues thoroughly. No signatory, by virtue of signing the Stipulation, ceded any opportunity to present its position on the issues addressed by the Stipulation. Moreover, all signatories actively participated in the hearing and were allowed to file both post-hearing briefs and comments and exceptions to the Hearing Examiner's Report. The Stipulation was simply an agreement among some of the parties to take certain positions in the case.

Neither at this time, nor in the future, will we consider such an agreement to be a "stipulation" unless it involves all or nearly all the parties to the case. Further, absent some unusual circumstance, unless the parties to such a stipulation forfeit certain rights, e.g., cross-examination or the right to present rebuttal evidence, thereby placing themselves at a procedural disadvantage, it is unlikely we will consider reopening a proceeding as requested here.

Applicability

We emphasize at the outset that this Final Order addresses issues related to the Company's Pilot Program only. The decisions made and reports required herein on various issues are designed to make the Pilot Program as effective as possible and to provide the Commission with the data necessary to learn as much as possible about the competitive energy marketplace before the start of full-scale retail choice. The parameters established herein will terminate at the end of the Pilot Program period. As necessary in the future, the Commission will re-examine these parameters and any other issues that arise to determine their applicability to the start of full-scale customer choice.

Pilot Program Size

The Hearing Examiner adopted the Pilot Program size as modified in the Stipulation. Under this proposal, the number of participants in Plan A[10] would increase from 23,720, as originally proposed, to 35,580 during Phase I and to 71,160 during Phase II. The amount of MWh per year available for use in Plan B[11] of the Pilot Program would increase from 170,000, as originally proposed, to 255,000 for Phase I and to 510,000

[10] Plan A includes customers purchasing power under the residential, GS-1, GS-2, and church rate schedules, as well as customers who choose to aggregate their loads.

[11] Plan B includes customers purchasing power under the Company's GS-3 and GS-4 rate schedules.

during Phase II. The Stipulation also would add a second geographic area in Northern Virginia for Plan A customer participation during Phase II of the Pilot Program. In adopting this proposal, the Hearing Examiner found it to be an adequate compromise, being large enough to attract competitive suppliers yet manageable enough to avoid administrative pitfalls.

The size of the Pilot Program is important to attract competitive suppliers. A larger pilot would be preferable from this perspective, but we recognize the complexity the Company faces to modify its business processes and systems to be able to manage a larger program. We will adopt the Pilot Program size as recommended by the Hearing Examiner.

In its application Virginia Power proposed that all Plan A customers completing and returning a "Request to Participate" card would be counted toward the total number of Pilot Program participants whether or nor those customers actually choose a competitive service provider. The Commission will not adopt this proposal. Instead, we will direct the Company to continue enrollment in the Pilot Program until the maximum number of Plan A customers set out above actually has been enrolled by competitive service providers. If a customer initially indicates interest in the Pilot Program but never selects a competitive service provider, that customer shall not be counted

against the total number of customers eligible to select a competitive service provider.

Projected Market Price for Generation

The Hearing Examiner found that the projected market prices for generation should be determined according to the methodology set out in the Stipulation, as modified to eliminate adjustments related to Virginia Power's transmission losses, transmission charges, and other ancillary service costs. He noted that the term "projected market prices for generation" is not defined in the Virginia Electric Utility Restructuring Act, §§ 56-576 to –595 of the Code of Virginia ("Restructuring Act"), which specifies only that the projected market price for generation is to be determined by the Commission. He also found that, as calculated under the Stipulation, the projected market prices for generation tend to result in projected market prices below the historical wholesale level. The Hearing Examiner further found that eliminating the transmission and ancillary cost considerations from the projection of market prices for generation is consistent with the "for generation" language of the Restructuring Act.

We find that, for purposes of this Pilot Program, it is appropriate to base projected market prices on wholesale historical prices for electricity. Also, like the Hearing Examiner, we will eliminate adjustments related to the Company's

transmission losses, transmission charges, and other ancillary service costs. Accordingly, we adopt the methodology for determining projected market prices as set forth in the Hearing Examiner's Report.

We find it impossible at this time to consider or include an adjustment for the projected cost of transmission, transmission line losses, and ancillary services. As part of meeting its burden of proof, the Company was obligated to provide at least enough evidence to enable the Commission to determine and analyze the basis for these costs. However, the record in this case was insufficient for any party to analyze and for the Commission to make any reasonable determination concerning what these costs were, not to mention how these costs should be treated in the calculation of projected market prices. For example, there was insufficient evidence as to the source, origin, or type of data used to support the Company's projected costs. While the rebuttal testimony of Virginia Power witness Koogler, filed August 27, 1999, referred to this adjustment and gave cursory per kW per month estimates, there is no indication whether the Company actually will incur this level of transmission costs and charges in the future.[12] Further, since Virginia Power, as the transmission provider, will collect these

[12] Company witness Koogler's rebuttal testimony filed August 27, 1999, was the first Virginia Power document to include this adjustment.

revenues, there is no evidence regarding the actual impact of these transactions on the Company's financial position. In short, Virginia Power, as the proponent of this adjustment, failed to carry its burden of proof with regard to these costs. Therefore, we are excluding any adjustment for these costs from the determination of projected market prices for generation in the Pilot Program.

We are cognizant that the Virginia General Assembly has enacted legislation that amends § 56-583 A of the Code of Virginia to require that projected market prices for generation be adjusted for the projected cost of transmission, transmission line losses, and ancillary services subject to the jurisdiction of the FERC, which the incumbent electric utility (1) must incur to sell its generation and (2) cannot otherwise recover in rates subject to state or federal jurisdiction.[13] We direct that Virginia Power work with the Commission Staff to track and study any transmission losses, transmission charges, and other ancillary service costs incurred during and related to the Pilot Program. We will require Virginia Power to submit a detailed report as to the magnitude and basis for these costs on or before April 1, 2001. In this way the Commission, the Company, and the public may be better informed about how to quantify and

[13] 2000 Va. Acts ch. 991.

consider these costs as we approach the start of statewide retail choice. The Commission will provide the Company ample opportunity to present its case in full with respect to these issues prior to the advent of customer choice on a permanent, full-scale basis.

We note that the projected market price for generation will be set approximately ninety (90) days before the start of the Pilot Program. Since the Pilot Program will not start until September 1, 2000, and since Phase II of the Pilot Program is scheduled to begin on January 1, 2001, we will not reset the projected market price for generation for Phase II of the Pilot Program. Before the start of Phase I, we will set a projected market price for generation which will remain constant for the duration of the Pilot Program.

Transmission Costs and Transition Charges

The Restructuring Act sets out the formula for determining wires charges, which may include just and reasonable transition charges. Virginia Power proposes to develop its unbundled rates for generation and the resulting wires charges in a manner that provides for the recovery of what it deems to be a transition cost. Specifically, the Company proposes to base charges for transmission service associated with the Pilot Program on its FERC OATT. These charges are expected to produce revenue that is lower than the revenue that would be produced by the

unbundled transmission component of Virginia jurisdictional retail rates. Consequently, Virginia Power believes that the difference between the FERC OATT based rates and the transmission component of retail rates should be treated as a transition cost.

Under § 56-583 A of the Code of Virginia, wires charges are the sum of (i) the difference between the incumbent utility's capped unbundled rates for generation and the Commission-determined projected market price for generation, plus (ii) just and reasonable transition costs. The sum of a utility's wires charges, the unbundled charge for transmission and ancillary services, the applicable distribution rates, and the Commission-determined projected market price for generation cannot exceed the utility's total capped rate.

Whether to allow, as a transition cost, the recovery of the difference between the revenues based on the FERC OATT and the Company's unbundled Virginia jurisdictional transmission rate was a significant issue for several parties.[14] The Company stated that it needs to recover this difference because it will

[14] In its Comments and Exceptions to the Hearing Examiner's Report, Virginia Power urged the Commission to allow recovery of these lost transmission revenues through the wires charge. See Comments and Exceptions of Virginia Electric and Power Company, December 21, 1999, at 17-18. The Attorney General argued, to the contrary, that these lost transmission revenues should not be added as a "transition cost" when determining wires charges. See Attorney General's Comments on the Hearing Examiner's Report, December 21, 1999, at 16-17.

be collecting a lower amount through the OATT as compared to the higher amount in its Virginia jurisdictional transmission rates.[15]

The Hearing Examiner recommended that, for purposes of determining Virginia Power's residual embedded generation rate and wires charge, the transmission rate should be based on the FERC OATT because no party disputed that, with the onset of customer choice, customers will receive transmission services pursuant to the FERC OATT.[16] The Hearing Examiner also recommended that differences between the FERC OATT-based transmission component and the Company's unbundled Virginia jurisdictional transmission cost should not be recovered as transition costs because these differences were not temporary differences that would dissipate with the implementation of full retail choice.

It appears that § 56-583 A assumes that the utility would recover the wires charges, and the “charge for transmission and ancillary services, the applicable distribution rates

[15] See Virginia Power's Comments and Exceptions to the Hearing Examiner's Report, filed December 21, 1999, at 17. As the Company states, the transmission rate based on the FERC OATT is less than the unbundled Virginia jurisdictional transmission rate for every class except the GS-4 class.

[16] See Hearing Examiner's Report, November 30, 1999, at 20. It should be noted that, unlike its original proposal, Virginia Power now intends to bill competitive service providers and customers who directly contract for transmission services under the FERC OATT rather than retail customers who do not directly procure transmission services.

established by the Commission and the . . . projected market price for generation . . . ." While the Company would be at risk for whether it recovered the "projected market prices for generation," the other elements appeared to be charges that it was assumed the utility would routinely recover.

Based on the testimony in this proceeding, it appears that, with the exception of Class GS-4, the Company will collect less revenue by the application of the FERC OATT than it would have through the transmission component of the unbundled retail rate. It is not clear as to whether this difference is a "transition cost." We will, however, treat it as such for this pilot. We will adopt the method proposed by the Company to achieve this, the residual method[17] of determining the unbundled generation rate to be used to calculate the wires charge.

We will reexamine this entire issue, including the propriety of the use of the residual method, in general, prior to the transition to full customer choice. The review will

[17] In developing its unbundled rates including the unbundled generation component of rates, Virginia Power began with a cost of service study that developed unbundled production, transmission, distribution, energy, and customer related unit costs for the various rate classes. These results were, however, not directly applicable to the development of unbundled rates, given the Company's intention to maintain bill-by-bill equality and to collect as "transition" costs the difference between the FERC OATT and the Virginia jurisdictional transmission component. To achieve this, Virginia Power applied a residual method which generally subtracted the sum of the customer and distribution unit costs produced by the cost of service study and the FERC OATT based rates for transmission and ancillary services from current rates for each class to determine a "residual" unbundled generation rate. This unbundled generation rate was used to determine the wires charge.

focus on whether this difference is a true transition charge and, if so, when the "transition" will be complete. We will also examine the amount of the difference. When utilizing the residual method for determining Virginia Power's embedded generation rate and resulting wires charges, it is important to recognize that the transmission component of the embedded generation calculation may be unstable. It can vary for any number of reasons. For example, if the characteristics of the class change because customers enter or leave Virginia Power's service territory, the class-specific load patterns crucial for calculating transmission rates change. The transmission costs billed to a competitive service provider as a Virginia Power transmission customer could also vary depending on which customers in a class shop competitively for electricity and how these shopping customers respond to market price signals, *e.g.*, whether they change usage patterns based on the possibility of paying lower prices during specific times of a day or month.

Accordingly, we will require Virginia Power to track and study the nature and level of transmission revenues collected by the Company that are associated with the Pilot Program. The Company must compare these values to the amount of transmission revenue it has forgone because retail customers have shopped in the competitive electric market. Virginia Power and the Commission Staff shall work together in designing and conducting

this study, the results of which shall be reported to the Commission on or before April 1, 2001.

Design of Wires Charges

The Hearing Examiner found that wires charges should be blocked to mirror Virginia Power's present rate structure. In making this recommendation, the Hearing Examiner looked for seasonal adjustment and ease of customer comprehension. Since under the Restructuring Act the sum of each customer's wires charge, unbundled charges for transmission and ancillary services, the applicable distribution rates set by the Commission and the projected market price for generation cannot exceed Virginia Power's capped rates, the Hearing Examiner found that wires charges should be structured to maintain revenue neutrality on a bill-by-bill basis.

We find that for all customer classes except the residential class, Virginia Power's proposed method for determining the wires charge rate design should be used. For the residential class, we find that the Staff's proposed Option 1 should be used during the Pilot Program because it provides better incentives against seasonal gaming and is more understandable to market participants.

Seasonal differentiation in rates is necessary to discourage seasonal gaming, a situation in which customers shop competitively for electricity during low-cost months but return

to the incumbent utility's service during periods of high cost. When shoppers leave the Virginia Power system and purchase competitive generation services, Virginia Power no longer produces electricity for those customers. If they return to Virginia Power's system during times of high-cost generation, the Company must provide them with electricity, often at higher cost because the Company must make spot purchases of fuel or power to meet this additional demand. The Company may also have to forgo making off-system sales at higher profit margins because it needs the electricity to serve returning customers. Virginia Power's fuel factor is likely to increase because of higher fuel costs that are caused by the sudden increase in demand during high-cost periods. This higher fuel cost will be shared among rate-regulated customers, while those customers who return to the competitive generation market would not necessarily pay the inflated fuel factor charge.[18]

Seasonally differentiated rates set a higher market price, or "price to beat," for competitive service providers during periods of high cost, resulting in a lower wires charge. During periods of low cost, the "price to beat" or "shopping credit" is lower but the wires charge is higher. This balancing of market

[18] A customer permanently returning to the competitive generation market would not pay the inflated fuel factor charge. A customer who continued to switch between the competitive market and the incumbent utility would pay the higher fuel factor charge during those times the customer took service from the incumbent utility.

price and wires charges with the actual cost of electricity dampens the incentives for competitive shoppers to return to the incumbent utility's service during periods of high cost because, though they are paying a higher market price, they are paying a lower wires charge than they would pay during periods of low cost.

Regarding ease of customer comprehension, the Hearing Examiner found that the Company's proposal was best because rate variations for small use customers were minimized. For example, customers using less than 800 kWh per month pay the same rate each month and are not accustomed to having seasonally differentiated rates.[19] However, we believe that this change to seasonal differentiation for such small use customers can be adequately explained in advertising and consumer education materials, an example of which was introduced at the hearing in this matter.[20] Indeed, the Staff's proposal should be more understandable to customers as a whole. The Hearing Examiner's proposal would have two separate wires charges and two separate "shopping credits" each season. The Staff's Option 1 has two wires charges each season, but they are designed to produce a single "shopping credit" each season. We believe this should be

[19] Under Virginia Power's current tariffs, seasonal pricing differences do not occur until a customer has used more than 800 kWh per month.

[20] See Exhibit AJE-20, Schedule 5.

easier for customers to understand. We find that the Staff's Option 1 produces the best balance between facilitating customer understanding and protecting the Company and its ratepayers from the potential negative effects of seasonal gaming.

As originally proposed, both Virginia Power's wires charge design and the Staff's Option 1 were the proposals best suited to try to achieve bill-by-bill equality.[21] We take no position at this time regarding whether the Restructuring Act requires bill-by-bill equality with the start of retail choice. However, for the Pilot Program, there are several obstacles to achieving bill-by-bill equality. Primarily, the concept of bill-by-bill equality relies on the assumption that pilot participants will pay the same price for the same level of service as non-participants if competitive marketers price their generation services at a level equal to the Commission-determined projected market price for generation and utilize rate designs structurally mimicking that of Virginia Power. This assumption is, at best, difficult to make. We hope and expect that competitive marketers will use a wide variety of innovative rate designs to attract customers. Additionally, as noted above,

[21] Bill-by-bill equality seeks to ensure that no competitively shopping customer receives a bill from Virginia Power (for delivery services) and from a competitive supplier (for generation services) that together exceed the bill Virginia Power would have sent had that customer remained under the Company's capped rates. This situation assumes the generation charge from the competitive supplier to its customer and the Commission-determined projected market price for generation for Virginia Power are the same.

given the potential instability in the price customers will pay competitive suppliers for transmission service based on the diversity of switching customers, there is even less of a possibility that bill-by-bill equality can be achieved.

Competitive Metering and Billing

The Hearing Examiner found that the Commission has the authority to conduct competitive metering and billing experiments under § 56-234 of the Code of Virginia. He concluded that the Pilot Program should allow competitive metering and billing for customers served under the GS-3 and GS-4 rate schedules, finding that even the small number of customers eligible for competitive metering and billing would provide Virginia Power and the Commission with valuable information regarding these competitive services.

While we agree with the Hearing Examiner that § 56-234 provides us with the authority to conduct competitive metering and billing experiments, we believe that this Pilot Program is not the appropriate forum for such experiments. The small number of GS-3 and GS-4 customers eligible to participate in the Pilot Program already have a high level of sophistication in purchasing electricity. Thus, we do not believe the limited experience that we or these customers would gain by allowing competitive metering and billing in the Pilot Program would offset the administrative costs to the Company of adding these

features to the Pilot Program. Also, since AEP-VA has proposed and structured its Pilot Program to allow competitive metering and billing, we may obtain adequate information concerning customer use of these services from that Pilot Program. For these reasons, we will not require competitive metering and billing in Virginia Power's Pilot Program.

New Customer Fees

The Commission Staff questioned several proposed Pilot Program fees, concerned that these fees would violate the rate cap provisions of § 56-582 A 3 of the Code of Virginia. These fees include: (i) a $5 fee for customers who switch between competitive service providers during the Pilot Program; (ii) off-cycle meter reading fees of $12 or $17; and (iii) fees for advanced meters installed at the customer's request. In addition to its concerns over the legality of the rates, the Staff questioned Virginia Power's proposal to collect in advance either a portion or the total of the cost to remove an advanced meter at the time the meter is installed.

The Hearing Examiner found that the new fees do not violate the rate cap provisions of § 56-582 A 3 and that the first two fees should be allowed. Concerning advanced metering fees, the Hearing Examiner found that Virginia Power should not collect up front for the cost of removing an advanced meter.

Section 56-582 A 3 provides as follows:

> The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and subsequently approved by the Commission, and made by an incumbent electric utility that is not currently bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002. The Commission shall act upon such applications prior to the commencement of the period of transition to customer choice, and capped rates determined pursuant to such applications shall become effective on January 1, 2001. Such rate application and the Commission's approval shall give due consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for a period of time ending as late as July 1, 2007. The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that experimental rates and rate programs may be closed to new customers upon application to the Commission.

The rate cap language is broad and definite; no exceptions are listed for new or increased expenses incurred because of customer choice. Moreover, elsewhere in the Virginia Electric Utility Restructuring Act, where new costs are to be allocated to others, the General Assembly was quite specific.[22] Thus, new charges for customers cannot be created or imposed simply

[22] *See, e.g.,* § 56-594 of the Code of Virginia.

because customer choice creates or increases costs to incumbent utilities.

Where, however a utility is providing a new service, with new costs, a new charge may be appropriate. The three new fees or charges proposed by Virginia Power for customers fall in different categories. First, providing advanced meters upon customer request is a new service and a charge is appropriate. We agree with the Hearing Examiner that the charge to customers for advanced meters should not include the cost of removal of the meters.

Second, the Company proposes a $5 fee for customers who switch between competitive service providers during the Pilot Program. This is not a new service; this is a part of the cost of customer choice. Such switching fees shall not be allowed.

The third fee the Company proposes is for off-cycle meter reading. It is not as readily apparent how this proposal should be categorized as it is for the other two. As long as meter reading is not a competitive service, then it is part of the rate cap. On the other hand, the Company does not regularly read meters off-cycle. Further, customers can switch to a new supplier without paying a separate meter reading fee, as long as the change occurs at a scheduled meter reading date. For purposes of the Pilot Program, at this time we will treat off-

cycle meter reading as a new service and allow the charge as recommended by the Hearing Examiner.

Self-Supply of Ancillary Services

The Hearing Examiner found that customers should be allowed to self-supply ancillary services during the Pilot Program as provided under Virginia Power's FERC OATT. In its comments and exceptions to the Hearing Examiner's Report, the Company agreed to allow the self-supply or third party supply of Ancillary Services 3, 4, 5, and 6. We find that Virginia Power should be required to follow its FERC OATT in allowing the self-supply or third-party supply of ancillary services throughout the Pilot Program.

FERC Order 888[23] requires transmission customers to purchase from their transmission providers Ancillary Service (1) Scheduling, System Control and Dispatch Service; and Ancillary Service (2) Reactive Supply and Voltage Control Service From Generation Sources. A transmission provider must offer, but a transmission customer need not actually purchase, Ancillary Service (3) Regulation and Frequency Response; Ancillary Service

[23] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), order on reh'g, Order No. 888-A, 62 FR 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997)(Order No. 888-A), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), appeal docketed, Transmission Access Policy Study Group, et al. v. FERC, Nos. 97-1715 et al. (D.C. Cir.) (hereinafter "Order 888").

(4) Energy Imbalance; Ancillary Service (5) Operating Reserve – Spinning; and Ancillary Service (6) Operating Reserve – Supplemental. Order 888 also requires that these services be unbundled from basic transmission service, although a transmission provider may assemble packages of Ancillary Services, not bundled with basic transmission service, which it can then offer at rates less than the total of individual charges for those services if purchased separately.[24]

Virginia Power, as a transmission provider, must comply with this and all other FERC orders regarding the provision of transmission service, even during the Pilot Program. We find that the Company should allow the self-supply or third-party supply of Ancillary Services in accordance with its OATT filed with and approved by the FERC.

Participation by Customers under Non-Traditional Rates

The Hearing Examiner agreed with Virginia Power's proportional proposal for participation in the competitive market by customers under non-traditional rates. Under this proposal, for customers wishing to participate in the Pilot Program, Virginia Power would waive contractual provisions that otherwise would require those customers to take service under non-traditional rate schedules for one to five years. For

[24] Order 888, §§ IV D 2 and 3, 61 FR 21587-89.

customers who are served in part under the Company's real time pricing schedules, Virginia Power will move a proportional share of those customers' load to the competitive market if they choose to shop for generation services. For example, if an industrial customer takes service in part from the GS-4 and in part from the real time pricing rate schedules, and that customer elects to move five percent (5%) of its load to the competitive market, then the Company will reduce the load served under both that customer's GS-4 and real time pricing schedules by five percent (5%).

The Virginia Committee contends that customers should be permitted to designate that portion of load currently served under non-traditional rate schedules that they desire to move to the Pilot Program. The Virginia Committee suggests that Virginia Power's proportional proposal provides a disincentive for some customers to participate in the Pilot Program. The Virginia Committee also argues that the proportional proposal violates the rate cap provisions of § 56-582 A 3 of the Code of Virginia in that the proposal requires a customer to relinquish its existing rate for a portion of its load that is still served by the incumbent electric utility if the customer seeks to have any portion of its load served by an alternative supplier. The Virginia Committee explains that, if a customer seeks to have any part of its load served by the competitive market, the

customer is required to pay a higher rate on the portion of its load previously selected for service under the non-traditional rate and that, because the customer must pay this higher rate, the rate cap on that portion of the customer's load is violated.

We disagree with this assessment. For example, consider an industrial customer who currently uses 500 kW of load, 400 kW of which is served under traditional rates and 100 kW of which is served under real time pricing rates. If this customer elects to shop competitively for 100 kW of power, Virginia Power will assume that 80 kW of this came from the traditional rate schedule and 20 kW came from the real time pricing rate schedule. Virginia Power will continue to bill 320 kW at the traditional rate and 80 kW at the real time pricing rate. Thus, for the portion of this customer's load that remains with Virginia Power, the customer is treated the same as before it entered the competitive market. One-fifth (1/5) of its load is still being served under the real time pricing schedule. Presumably, the customer would not have shopped competitively for 100 kW unless it expected the market price for that 100 kW to be less than the price the customer was paying for 80 kW under the traditional rate plus 20 kW under the non-traditional rate. Thus, the rate cap provisions of § 56-582 A 3 are not violated by the Company's proportional proposal.

We find that customers taking service under non-traditional rate schedules should be permitted to participate in the Pilot Program and may return to the non-traditional rate schedule if they so choose. Additionally, it is reasonable to adopt the Hearing Examiner's recommendation that we use Virginia Power's proportional proposal to govern participation in the competitive market by customers served under non-traditional rates. We adopt the proportional proposal.

Adjustment to the Fuel Factor

In his rebuttal testimony Virginia Power witness Evans requested a change in the treatment of the fuel factor. He asked that margins received from the sale of power that is displaced by customers shopping in the competitive market be excluded from the fuel factor even though, traditionally, fifty percent (50%) of the margins from off-system sales flow through the fuel factor. The Hearing Examiner agreed with the suggestion of the Attorney General that this requested change should be deferred until a later time. This issue has been addressed in the Commission's March 28, 2000, Final Order in Case No. PUE990717, considering the Company's latest fuel factor application.[25]

[25] Virginia Power's fuel factor was most recently revised in Application of Virginia Electric and Power Company To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia, Case No. PUE990717, Document Control Center No. 000340155 (March 20, 2000).

Resale of Services

Brayden Automation Corporation, Energy Consultants, Inc., and Picus, LLC, requested that the Commission require Virginia Power to offer third parties the right to resell Virginia Power's energy services. The Hearing Examiner found that this step is unnecessary based on the current development of the wholesale power market. He also noted that the transmission and distribution functions have been unbundled to provide open access and that, in his view, there is adequate opportunity for competitive energy suppliers to compete for energy sales. He stated that this resale proposal may be more appropriately considered at a future date if a competitive energy market fails to develop.

As we stated at the outset of our discussion concerning the Pilot Program, one purpose of this Pilot Program is to identify areas and operations that may be limiting or inhibiting the development of competition and possible solutions to enhance customer choice. Therefore, rather than consider this potential problem in the abstract, we will defer consideration of this issue until we receive a specific complaint that a competitive service provider is experiencing geographical and operational difficulties. We will address this issue of the right to resell Virginia Power's energy services in the context of any complaint received.

Funding of Energy Efficiency Programs

Brayden Automation Corporation, Energy Consultants, Inc., and Picus, LLC, also requested the Commission to require participants in the competitive electric industry to use a specific portion of their revenues to fund energy efficiency programs. The Hearing Examiner found that it was unnecessary to adopt this recommendation. He noted that the Pilot Program should provide all participants with an opportunity to experiment with retail choice and that the consideration of energy efficiency programs may be better analyzed at the end of the Pilot Program. We agree that the Pilot Program should have as few restrictions on competitive energy generation and supply as possible and that we should allow the market participants ample opportunity for creativity in producing and marketing their energy products. Accordingly, we will not require specific funding for energy efficiency programs at this time.

Reporting Requirements

The Hearing Examiner found that Virginia Power should file semi-annual reports including the following data:

- Overall customer participation;
- Effectiveness of the Consumer Education Plan;
- Customer-originated complaints;
- To the extent available, terms offered by competitive suppliers;

- Number and class of customers attracted by competitive suppliers;
- Number of advanced meters requested and installed;
- Requests for meter tests by competitive suppliers;
- Competitive supplier requests for special billing service; and
- Data on wholesale scheduling.

We agree that Virginia Power should provide all of this data in report form, with the first report due at the end of Phase I and future reports every six months thereafter. We will need this information to evaluate the effectiveness of the Pilot Program and to resolve, for the start of full retail choice, any problems that may have arisen during the Pilot Program. We will also direct the Company to track and provide, as part of its report on customer participation, the number of customers who initially indicate interest in the Pilot Program (such as by returning a "Request to Participate" card) but who do not select a competitive service provider. Such data will allow us to evaluate how many customers either lost interest in the Pilot Program or affirmatively decided to remain under Virginia Power's capped rates rather than to select a competitive service provider.

The Hearing Examiner also found that the Company should provide the following information to the extent that Virginia

Power can obtain such information in the usual course of business:

- Corresponding market share in Virginia of the participating suppliers and, where available, a comparison of market offers;
- Customer cost savings on generation;
- Disputes or problems among customers or suppliers, including associated remedies;
- Technical or business system problems that arise during the Pilot Program; and
- Other information as requested by the Commission Staff.

We find that we may need much of the information on this second list, proposed by the Staff. If this information is necessary to evaluate the Pilot Program and is not supplied in regular reports, we may have to require the Company to provide this or other information.

Other Considerations

Several of our conclusions are based in part on Virginia Power's current FERC OATT. To the extent that any FERC rate or policy changes in the future, various aspects of the Pilot Program may need to be changed accordingly. For example, in determining the Company's wires charges, we are relying in part upon the Company-determined transmission component based upon its FERC OATT. If the Company's calculation of its transmission component changes and if these changes are approved at the FERC,

we may need to revise the manner in which we calculate the wires charges.

Additionally, this Pilot Program must conform to rules under consideration in Case No. PUE980812, which rules govern electricity and natural gas retail access pilot programs. Within thirty (30) days of the issuance of a Final Order in Case No. PUE980812, the Company shall file with the Commission's Staff a plan to conform its Pilot Program to those rules. We note that some of those rules refer to the Virginia Electronic Data Transfer Working Group ("VAEDT"), a body organized to develop electronic standards for all participants in the Virginia electric industry. This group also may consider business rules or practices that govern the electronic standards it develops. To the extent required by the retail access rules, we expect the Company to conform its Pilot Program to such standards and practices as recommended by the VAEDT.

Accordingly, IT IS ORDERED THAT:

(1) The request of the signatories to the Stipulation that the Commission grant them time to reach a modified Stipulation or to withdraw their support and request further hearing on the issues addressed in the Stipulation is hereby denied;

(2) The November 30, 1999, Hearing Examiner's recommendations are hereby adopted except as modified herein;

(3) The Pilot program shall begin September 1, 2000, and shall end when the participants are allowed to choose their competitive suppliers on a non-pilot basis;

(4) The size of the Pilot Program shall be adjusted to the level recommended by the Hearing Examiner;

(5) Pilot Program enrollment in Plan A will be determined based on the maximum number of customers or load that actually has been enrolled by competitive providers. Customers indicating interest in the Pilot Program but not selecting a competitive service provider shall not be counted against the total number of customers eligible to select a competitive service provider;

(6) The projected market prices for generation shall be determined according to the methodology adopted by the Hearing Examiner;

(7) As discussed herein, Virginia Power shall work with the Commission Staff to track and study its current transmission losses, transmission charges, and other ancillary service costs and submit a detailed report of these costs and the basis therefore on or before April 1, 2001;

(8) The projected market prices for generation shall be established by the Commission Staff and Virginia Power, in accordance with the principles set forth in this Order, approximately ninety (90) days prior to the start of Phase I of

the Pilot Program and shall remain in effect for the duration of the Pilot Program;

(9) Unbundled transmission rates and resulting wires charges for the Pilot Program shall reflect the Company-determined transmission component by class based on the FERC OATT;

(10) As discussed herein, Virginia Power shall work with the Commission Staff to design and conduct a study of the nature and level of transmission revenues the Company collects that are associated with the Pilot Program and shall compare these revenues with the amount of transmission revenues the Company has forgone from customers choosing competitive suppliers. Virginia Power shall report its findings to the Commission on or before April 1, 2001;

(11) Virginia Power's present rate structure shall be used to calculate wires charges for all customer classes except the residential class. For that class, wires charges shall be calculated based on Staff Option 1;

(12) Competitive metering and billing shall not be required in the Pilot Program;

(13) Virginia Power may charge off-cycle meter reading fees;

(14) Virginia Power may charge in advance for the installation, but not the removal, of advanced meters installed upon customer request;

(15) The Company shall not charge a fee for switching customers between competitive service providers;

(16) Virginia Power shall permit customers to self-supply or obtain the third-party supply of Ancillary Services as provided for in the Company's FERC OATT;

(17) Customers taking service under non-traditional rate schedules shall be permitted to participate in the Pilot Program and may return to the non-traditional rate schedule;

(18) Customers that have a portion of their load supplied under a non-traditional rate schedule may move their load proportionally, as discussed herein, to a competitive service provider during the Pilot Program;

(19) Virginia Power and competitive service providers shall not be required to fund energy efficiency programs during the Pilot Program;

(20) As discussed herein, Virginia Power shall file reports at the end of Phase I and every six months thereafter for the duration of the Pilot Program. These reports must contain information regarding: overall customer participation, including the number of customers who initially indicate interest in the Pilot Program but who continue to take service under the

Company's capped rates; effectiveness of the Consumer Education Plan; customer-originated complaints; to the extent available, terms offered by competitive suppliers; number and class of customers taking generation service from competitive suppliers; number of advanced meters requested and installed; requests for meter tests by competitive suppliers; competitive supplier requests for special billing service; and data on wholesale scheduling. Virginia Power also is requested to provide the other items listed in the "Reporting Requirements" section of this Order;

(21) The Company shall file with the Commission's Staff a plan to conform the Pilot Program to comply with the final rules adopted by the Commission in Case No. PUE980812 within thirty (30) days of the Final Order in that case;

(22) The Company shall file updated rates, rules and regulations and terms and conditions of service for the Pilot Program, in conformity with this Order, at least ninety (90) days before the start of Phase I of the Pilot Program;

(22) This matter shall remain open for the receipt of reports by Virginia Power and for other matters concerning the Pilot Program, as they may arise.